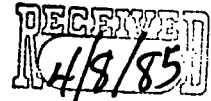
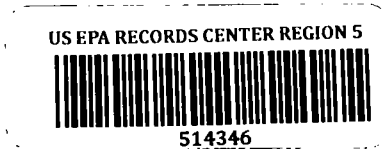




U.S. Department of Justice

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Washington, D.C. 20530

April 3, 1985

Mr. Frederick Stiehl  
Acting Associate Enforcement  
Counsel for Waste Enforcement  
U.S. Environmental Protection  
Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Re: United States v. Reilly Tar and Chemical  
Corp., et al., Civ. No. 4-80-469

Dear Fred:

In the course of our continued prosecution of this case, I am writing to emphasize the need for EPA to complete an RI/FS and prepare a decision document for the Reilly site before the trial of this case begins. The trial date in the Reilly Tar case was recently changed from April 29, 1985 to September 3, 1985. With this extension in the trial date, it is now imperative that the United States have a completed RI/FS and decision document for the Reilly Tar site by September 3, 1985, if the United States is to be able to litigate its injunctive relief claims.

The importance of having a complete RI/FS prior to the trial of this case arises because the first phase of the trial will determine both the defendant's liability as well as the appropriate remedy for the site. At this time, the only ROD which has been approved for the Reilly site involves the construction of a GAC drinking water treatment system at SLP Well 15, which is one of the contaminated water supply wells near the site. The construction of the GAC treatment system will begin shortly and is expected to be completed with eight to twelve weeks. EPA has also recently approved funding for the initiation of an RI/FS for the near-surface aquifers (the Drift/Platteville and St. Peter aquifers). In addition to the near-surface RI/FS work, an RI/FS must be done for the deeper aquifers, namely, the Prairie du Chien-Jordan, Ironton-Galesville, and Mount Simon-Hinckley aquifers. Because of the confirmed contamination in the Prairie du Chien-Jordan aquifer, source control and gradient control may be required in that aquifer. Since the Prairie du Chien-Jordan is the most heavily used source of drinking water in the area, source control and gradient control are the most significant aspects of our proposed remedy. We are not certain at this time whether

the RI/FS for the Prairie du Chien-Jordan and the deeper aquifers has been scheduled. However, the completion of an RI/FS for the entire site is critical for our litigation efforts.

Obviously, the government is placed in a disadvantageous position if an RI/FS and a decision document are not completed prior to the trial on remedy for several reasons. Most importantly, without an RI/FS and a decision document, the United States must at trial present a remedy which does not have EPA approval and, arguably, may not fully comply with the National Contingency Plan and EPA policy. Until the RI/FS is completed, the cost-effectiveness of the various remedial action alternatives which will be discussed at trial will not have been evaluated by EPA, and the agency will not have determined the cost-effective remedy. Thus, the United States' trial position is significantly weakened by the absence of a full RI/FS and a decision document. Further, the failure of the government to complete its evaluation of remedial alternatives means that the evaluation of remedial alternatives performed by the Defendant carries much more influence with the Court. Without a determination of remedy by the United States, the Court itself will have no apparent choice but to determine the most appropriate remedy for the site de novo.

With the extension of the trial date to September 3, 1985, it should now be possible for the United States to concentrate its efforts upon completion of an RI/FS and decision document for the entire site. Moreover, with this additional time, the Court is likely to consider that the government now has no compelling justification for failure to have determined the remedy by trial.

Therefore, I am requesting that you advise the program to do what is necessary towards completing the RI/FS and decision document for the Reilly site by the September 3, 1985 trial deadline.

Sincerely yours,

F. HENRY HABICHT II  
Assistant Attorney General  
Land and Natural Resources Division

By:  David T. Buente, Acting Chief  
Environmental Enforcement Section

cc: Robert Schaefer  
Mary Gade  
Gene Lucero  
Paul Bitter  
David Hird  
Robert Leininger